

REMARKS

This is in response to the Office Action dated March 1, 2004. Claims 1-25 are pending.

Claim 1 stands rejected under 35 U.S.C. Section 102(b) as being allegedly anticipated by Boire (US 6,045,896). This Section 102(b) rejection is respectfully traversed for at least the following reasons.

Claim 1 as amended requires "top, middle and bottom dielectric coating portions having effective or average indices of refraction n_T , n_M and n_B , respectively, first and second infrared (IR) reflecting layers comprising silver (Ag), wherein the first IR reflecting layer comprising Ag is located between the bottom and middle dielectric coating portions, and the second IR reflecting layer comprising Ag is located between the middle and top dielectric coating portions, and wherein the top, middle and bottom dielectric coating portions do not include the IR reflecting layers and also do not include contact layers which contact the IR reflecting layers; the bottom dielectric coating portion comprising a first dielectric layer comprising titanium oxide . . . the top dielectric coating portion comprising a third dielectric layer comprising titanium oxide provided over the first and second IR reflecting layers and a fourth dielectric layer comprising silicon oxide provided over the third dielectric layer comprising titanium oxide . . . wherein the average or effective indices of refraction n_T , n_M and n_B of the top, middle and bottom dielectric coating portions respectively have values so that $n_T < n_M < n_B$." For example, see the instant specification at paragraphs 0030-0031. As explained in

paragraph 0031 of the instant specification, these claimed materials combined with the claimed decreasing of the respective effective indices of refraction "n" from the innermost or bottom dielectric portion B, to the middle dielectric portion M, and on to the top dielectric portion T toward the air, the claimed coated article is able to realize a combination of increased visible transmission and/or reduced visible reflection, and fairly neutral coloration.

The cited art fails to disclose or suggest the aforesaid aspects of claim 1. For example, Boire fails to disclose or suggest the claimed $n_T < n_M < n_B$ feature recited in claim 1. There is nothing in Boire that would have led one of ordinary skill in the art to have chosen materials capable of satisfying the relationship called for in claim 1. Instead, Boire teaches directly away from the invention of claim 1 as none of Boire's examples come close to satisfying the invention of claim 1.

The final rejection argues that "Boire teaches an embodiment wherein the average indices of refraction of the top (n_T), middle (n_M) and bottom (n_B) dielectric coating portions have values so that $n_T < n_M < n_B$." This statement/argument made in the final rejection is incorrect. No embodiment of Boire teaches the $n_T < n_M < n_B$ feature recited in claim 1. As explained above, none of the many examples in Boire disclose or suggest this claimed feature. Moreover, no other single embodiment of Boire discloses or suggests this feature.

It is well-established as a matter of law that one cannot combine different embodiments of a reference to "anticipate" a claim under Section 102. The final rejection

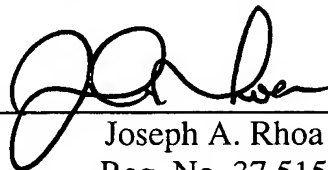
appears to be based on such an impermissible combination. Boire provides a laundry list of materials that may be used for certain dielectric layers. However, Boire nowhere discloses or suggests using different materials in different layers in a manner so as to meet the invention of claim 1 (e.g., Boire nowhere discloses or suggests using different materials in different layers in a manner so as to meet $n_T < n_M < n_B$). Again, an anticipation rejection cannot be based on a combination of many different possible embodiments of a reference. For an anticipate reference to be correct, a reference must clearly disclose each requirement of a claim - that clearly is not the case here.

The other claims also clearly define over Boire. For example, Boire fails to disclose or suggest the subject matter of the last paragraphs of claims 12 and 23.

For at least the foregoing reasons, it is respectfully requested that all rejections be withdrawn. All claims are in condition for allowance. If any minor matter remains to be resolved, the Examiner is invited to telephone the undersigned with regard to the same.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Joseph A. Rhoa
Reg. No. 37,515

JAR:caj
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100